

APPROVED

**BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE**

Friday, May 5, 2006

Department of Health Professions
6603 West Broad Street, 5th Floor
Richmond, Virginia 23230-1712
Conference Room 1

- CALL TO ORDER:** The meeting was called to order at 9:13 a.m.
- PRESIDING:** Edward P. Snyder, D.D.S., Chair
- MEMBERS PRESENT:** Jacqueline G. Pace, RDH
James D. Watkins, D.D.S.
Harold S. Siegel, D.D.S., Ex-Officio
- MEMBER ABSENT:** Paul N. Zimmet , D.D.S.
- STAFF PRESENT:** Sandra Reen, Executive Director
Elaine Yeatts, Senior Policy Analyst
LaFonda D. Parham, Administrative Assistant
- COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General
- QUORUM:** With three members present a quorum was established.
- PUBLIC COMMENT:** Dr. Griggs distributed written comments and advised that the opinions he is giving are his own. He stated he is in basic agreement with the proposal of the Ad Hoc Committee on establishing two classes of dental assistants except for one provision. He feels that there is no need for a Dental Assistant II to be registered with the Board because the dentist is responsible for the care given. He urged the Committee to amend the proposal to remove the registration provision.
- Dr. Griggs also shared his concerns with the regulations governing the use of Nitrous Oxide and Oxygen Analgesia (i.e., nitrous oxide). He stated that the sedation regulations which will become effective next month have nitrous oxide grouped under the Anxiolysis protocols. He urged the committee to reconsider the regulation and encouraged a dialogue with dentists and other interested parties to craft a nitrous oxide regulation that would provide the level of safety that is appropriate for this very safe and reversible analgesic agent.

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Ms. Reen advised Dr. Griggs that the regulation in question is already in effect, that it became effective in June, 2005. Ms. Yeatts commented that addressing the concern would require regulatory action. Dr. Snyder stated that there is no immediate relief that the Board might provide.

MINUTES:

Dr. Snyder asked if everyone had a chance to review the minutes. On a properly seconded motion by Dr. Seigel, the minutes of the Regulatory/Legislative Committee meeting held March 2, 2006 were approved.

**LETTERS ON REGULATION
OF NITROUS OXIDE
ANALGESIA:**

Dr. Snyder reviewed the letters submitted by Dr. Hutchinson, Dr. White, Dr. Richardson and Dr. Dameron expressing concerns about the new regulations for administration of nitrous oxide analgesia. Each addresses the safety of nitrous oxide and indicate that a two person treatment team is unnecessary and costly.

Dr. Watkins moved to recommend to the Board that it undertake the fast track regulatory process to carve out the treatment team provisions for nitrous from the provisions for anxiolysis so that one person is required to be with the patient during administration of nitrous oxide. Following discussion the motion was adopted.

Ms. Yeatts asked the Committee to look through regulation 18 VAC 60-20-108 to see if there is anything other than C1 that needed to be amended in the regulation. No other changes were identified.

**LETTER ON VDA POSITION
ON DENTAL ASSISTANTS
FROM DR. CRABTREE:**

Dr. Snyder noted that the letter from Dr. Crabtree addresses the policy of the Virginia Dental Association (VDA) regarding expanded functions for dental assistants. The VDA House of Delegates decided at the September meeting that the VDA supports proceeding with the expanded functions proposal but wanted to refer the scaling technician issue back to their Workforce Taskforce to develop further consensus on how to provide scaling services to the public.

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Dr. Crabtree provided statistics from the Virginia Employment Commission website on the disparity in supply and projected demand in dental professions.

Ms. Yeatts commented that the numbers of licensees are higher than what was stated. Dr. Dickinson commented that the numbers reflect the information collected by the Department of Labor Statistics about employment.

The VDA policy since 1992 to allow dental assistants to perform prophylaxis was discussed. Dr. Snyder asked Dr. Dickinson of the VDA for the definition of the term "prophylaxis" as used in the policy. Dr. Dickinson indicated that the VDA had not defined the term but he believed the standard definition is what was intended.

**REPORT ON AD HOC
COMMITTEE MEETING
FROM DR. WATKINS:**

Dr. Watkins noted that the Ad Hoc Committee had a productive meeting on April 14, 2006 and that the draft minutes from the meeting are in the agenda package. Dr. Snyder stated the language advanced by the Ad Hoc Committee reads as follows:

- (A) A Dental Assistant I is a person who is employed to assist a licensed dentist or dental hygienist by performing such duties as may be prescribed by regulations of the Board.
- (B) A Dental Assistant II is a person who is registered with the Board, holds a certification from an ADA recognized credentialing organization and has met such additional educational and training requirement as prescribed by regulations of the Board. A Dental Assistant II may perform such other duties that are reversible intraoral procedures and under the direction of a licensed dentist as may be prescribed by regulations of the Board.

Dr. Seigel moved to accept the report of the Committee. The motion passed.

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**LEGISLATIVE
PROPOSAL FOR DENTAL
ASSISTANTS:**

Dr. Snyder suggested that the proposed language from the Ad Hoc Committee be advanced without the requirement that a dental assistant II be registered with the Board. He discussed the cost of registration and his belief that the dentist would be accountable in support of his suggestion.

Dr. Seigel moved that the recommendation to the Board be:

(A) A Dental Assistant I is a person who is employed to assist a licensed dentist or dental hygienist by performing such duties as may be prescribed by regulations of the Board.

(B) A Dental Assistant II is a person who holds a certification from an ADA recognized credentialing organization and has met such additional educational and training requirement as prescribed by regulations of the Board. A Dental Assistant II may perform such intraoral procedures under the direction of a licensed dentist as may be prescribed by regulations of the Board.

The motion was seconded then Dr. Seigel explained that he agrees with not requiring registration and he thinks that specifying that only reversible procedures might be delegated to a dental assistant II is unnecessary. He felt that the needed regulations should address any restriction to be imposed. Ms. Yeatts commented against leaving "reversible" out. Dr. Watkins agreed with Dr. Seigel then called for the question. The motion passed.

**CONSIDER REPEAL
OF §54.1-2708:**

Mr. Casway recommended that the Board propose repeal of this section of the statute which came to his attention due to a lawsuit. He commented that the provision may have been inadvertently left in the Code when the section was changed in 1972 and was no longer relevant. He advised that Dentistry is the only Board with such a provision.

Dr. Seigel moved to recommend to the Board that it

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propose legislation to repeal this section.

The motion was seconded and passed.

Mr. Casway then suggested an alternative to repeal would be deleting the phrase "except in the case of a monetary penalty," would address any confusion about the application of the statute.

Dr. Seigel moved to recommend to the Board a legislative proposal to strike the phrase "except in the case of a monetary penalty," from the statute. The motion was seconded and passed.

**CONSIDER OF REPEAL OF
§54.1-2709.C (iii):**

Ms. Reen noted that the Executive Committee referred this matter for consideration in light of the Board's decision to accept the results of a state or regional clinical examination for licensure by credentials. §54.1-2709.C(iii) and the corresponding provision in 18 VAC 60-20-71.4 of the regulations states that the Board may grant a license to practice dentistry to an applicant for licensure by credentials if he (iii) has not failed a clinical examination required by the Board in the five years immediately preceding his application. It was agreed that this provision may be confusing to candidates and is unnecessary. Dr. Seigel moved to recommend to the Board to eliminate 54.1-2709.C (iii). The motion was seconded and passed.

**BEGIN REGULATORY
PROCESS FOR HB 996:**

Ms. Yeatts requested guidance on the major points to be addressed in the development of a proposed Notice of Intended Regulatory Action to be considered by the Board at its June 9th meeting. She then reviewed the regulations allowing dental hygienists to administer drugs from Kentucky, Tennessee and South Carolina.

Dr. Watkins asked staff to find out if CODA has standards for accrediting anesthesia programs. Mr. Whitehead asked that individuals with prior training be grandfathered in. Dr. Snyder responded that this could be done so long as their training meets the requirements to be set by the Board.

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Ms. Yeatts reviewed Kentucky's requirements for the minimum number of hours of education, clinical skills training and written testing in a program with CODA accreditation.

Dr. Seigel moved that the NOIRA address the topics of:

- programs being accredited by CODA
- didactic education
- clinical skills training and
- testing on education and training.

The motion was seconded and passed.

**PETITION FOR
RULE-MAKING FOR
CONTINUING EDUCATION:**

Ms. Reen reviewed the petition filed by Dr. Wood dated April 17, 2006 which requests 2 hour of CE credit be granted annually for an equivalent time as a volunteer. She noted that the regulation on continuing education currently requires participation in courses so an amendment would be needed to adopt the recommended policy. Dr. Snyder stated that volunteer activities were valuable educational experiences. Ms. Yeatts asked about verification of attendance and how such CE would be audited. Dr. Griggs commented that he was not in favor of granting continuing education for volunteer service. He stated that 15 hours of coursework was a reasonable standard and questioned whether requiring more hours might be considered to allow for volunteer service credit. Ms. Yeatts advised that the Board of Medicine recognizes two types of CE and requires a total of 60 hours every two years. Dr. Seigel moved to recommend that the Board deny the petition. The motion was seconded and adopted.

**REVIEW of LAW AND
REGULATIONS
ON ADVERTISING:**

Ms. Reen reported that the Committee decided at its last meeting to review the advertising rules. She also noted that the guidance on advertising given by the Board at its last meeting has been tremendously helpful in addressing inquiries and complaints. Dr. Watkins and Dr. Snyder reported they had not begun work on developing a guidance document.

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Mr. Casway reviewed §54.1-2706. (7) which allows the Board to sanction a licensee for publishing or causing to be published in any manner an advertisement relating to his professional practice which: (i) is false, deceptive or misleading, (ii) contains a claim of superiority, or (iii) violates regulations promulgated by the Board governing advertising. He stated that the statute is fine the way that it is then suggest that how it is regulated and enforced needs to be discussed. It was agreed to defer discussion of the regulations to the next meeting.

**LETTER ON FEE-SPLITTING
FROM DR. BRUNO:**

Ms. Reen presented a letter from Dr. Bruno dated April 21, 2006 in which he describes a practice between specialists and restorative dentists regarding the purchase of restorative parts and asks the Board if the described practice is fee-splitting and is it compliant with the dental statute and regulations. Dr. Watkins and Ms. Pace advised that the practice described is standard, that it isn't a violation of any rule. After discussion, Ms. Reen stated that this letter will be in the June 9, 2006 agenda packet. She asked if she needed to obtain additional information from Dr. Bruno and was advised that it was not necessary.

**BHP REQUEST
REGARDING ELECTRONIC
PRACTICE:**

Ms. Reen discussed the e-mail from Ms. Carter dated March 10, 2006 which requests a report from the Board on the impact of electronic practice (telehealth) and requested any topics that should be included in the report. She asked if this issue had come up in any dental meetings or other forums on the national or regional levels. The only issue identified in discussion was a concern that not all digital imaging programs prevent changes being made to the image. Ms. Reen stated she would report that concern.

ADJOURNMENT:

With all business concluded, the Committee adjourned at 12:34 p.m.

Edward P. Snyder, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date